a "sale,"[9] nor as an agreement passing "present vested rights,"[10] nor simply as "an executory agreement."[11] The legal consequences of all three situations are involved.[12] The futility of an appeal by the buyer to the doctrine of potential possession for the purpose of proving that his purchase is an executed transaction, and likewise the futility of such an appeal by the seller to prove that he still owns and has the right of possession to his crop is illustrated in the principal cases. The Uniform Sales Act cuts the Gordian knot by abolishing the doctrine entirely.[13] *H. B. S.*

SALES: EFFECT OF PAYMENT BY CHECK ON PASSAGE OF TITLE —Three carloads of hogs were purchased, paid for by check upon delivery. It is clear that, aside from the use of the check, a "cash transaction was intended." The check was dishonored. In the interval between its acceptance by the seller and its dishonor the purchaser had shipped the hogs to the plaintiff, who disposed of them. The plaintiff brought this action of interpleader to determine the rights of the original vendor and an attaching creditor of the original buyer. In the case of the *South San Francisco Packing and Provision Company v. Jacobsen*,[1] it was held that the title to the hogs remained in the original seller, and that he was entitled to the proceeds derived from a resale thereof, as against an attaching creditor of the original purchaser.

The decision accords with justice and with the weight of authority, but the novelty of the facts in California would seem to make the principles involved worthy of comment. Today the intention of the parties to a sale of identified personalty determines the passing of title.[2] Intention is the criterion. It is determined through the overt acts of the parties, the terms of the contract, usages of the trade, together with other circumstances and conditions surrounding the sale.[3]

A cash transaction is a conditional sale, the inference being that title is not to pass until payment has been made. In cash transactions where a check is received in payment, the prevailing case law presumption (the Negotiable Instruments law being silent on the subject)[4] is that payment is made when the check is

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[9] Wiant v. Hayes (1893) 38 W. Va. 681, 18 S. E. 807.

[10] Farmers Loan and T. Co. v. Long Beach Imp. Co. (1882) 27 Hun (N. Y.) 89.

[11] Skipper v. Stokes (1868) 42 Ala. 255, 94 Am. Dec. 646.

[12] As was seen in the principal cases.

[13] Uniform Sales Act, § 5 (3); i. e., the doctrine is not excepted from the rule governing future goods in general.

[1] 59 Cal. Dec. 634, 190 Pac. 628.

[2] Williston on Sales, pp. 353, 355, § 261, and cases there cited; see also Uniform Sales Act, §§ 17 and 18, and Cal. Civ. Code, § 1140; Blackwood v. Cutting Packing Co. (1888) 76 Cal. 212, 216, 18 Pac. 248, 9 Am. St. Rep. 199; 35 Cyc. 308, 322.

[3] See Uniform Sales Act, § 18; Williston on Sales (1909) p. 353.

[4] Uniform Negotiable Instruments Law, Cal. Civ. Code, § 3265c.

cashed.[5] The reasoning of such cases is that a worthless check is not payment, hence the title does not pass and the vendor is entitled to retake his goods from the purchaser.[6]

The transaction, in the absence of contrary evidence, is presumed to be a cash transaction, transfer of title and payment to be simultaneous acts.[7] Considered with the further presumption that a check is not received as unconditional, absolute payment, in the absence of an intention to pass title notwithstanding, it follows that title would not pass. The mere fact of placing the buyer in possession works no estoppel in favor of a purchaser from him.[8]

On the other hand, in determining the intent of the parties, it might be argued that placing the buyer in possession is evidence of the seller's intention to pass title. The original vendor's assent to transfer the property in exchange for the worthless check might have been procured by fraud, but such is not invariably the case.[9] In the principal case, the return of the check because of insufficient funds, together with the unexplained disappearance of the original buyer, is some evidence of fraud. However, the fact that during the interval separating the drawing of the check and its presentation for payment, there were ample funds in the bank to meet it, led the trial court to find against fraud. The finding was not disturbed on appeal. Even in the event of fraud, the seller could still claim the goods, or their value, as against the fraudulent buyer and the plaintiff, as the latter is not a bona fide purchaser for value.[10] Likewise an attaching creditor of the fraudulent buyer should derive no greater rights than the buyer himself.[11] A real difficulty arises when the rights of a bona fide purchaser for value intervene. There are dicta to the effect that

[5] Taking a check or note and giving a receipt in full does not constitute an agreement to accept paper as an absolute payment. Comptoir D'Escompte de Paris v. Dresbach (1888) 78 Cal. 15, 23, 20 Pac. 28; Herren Co. v. Mowby (1907) 5 Cal. App. 39, 89 Pac. 872; Benjamin on Sales (7th ed.) pp. 755-762; Johnson etc. Co. v. Central Bank (1893) 116 Mo. 558, 22 S. W. 813; Nat'l Bank v. Chicago etc. Ry. (1890) 44 Minn. 224, 9 L. R. A. 263, 20 Am. St. Rep. 566; Hodgson v. Barrett (1877) 33 Ohio 63, 31 Am. Rep. 527.

[6] Supra, n. 5; 23 R. C. L. 1448; 35 Cyc. 327-328.

[7] See Williston on Sales, §§ 341-344; Cohn v. Harada (1917) 35 Cal. App. 5, 168 Pac. 1151; Bagert Flour Co. v. Klein (1917) 166 N. Y. Supp. 766.

[8] Williston on Sales, p. 505, § 324, also p. 554, § 346; Kohler v. Hayes (1871) 41 Cal. 455; Rodgers v. Bachman (1895) 109 Cal. 552, 42 Pac. 448; Van Allen v. Francis (1899) 123 Cal. 474, 56 Pac. 339; Houser-Haines Mfg. Co. v. Hargrave (1900) 129 Cal. 90, 61 Pac. 660.

[9] Cf. Williston on Sales, p. 559, § 346.

[10] Mathews v. Cowan (1871) 59 Ill. 341; Burdick on Sales (3d ed.) p. 201, § 291.

[11] An attaching creditor is generally held to acquire no greater rights in the property attached than the debtor has. Oswego Starch Factory v. Lendrum (1881) 57 Ia. 573, 10 N. W. 900, 42 Am. St. Rep. 53; Thompson v. Rose (1844) 16 Con. 71; Jordan v. Parker (1869) 56 Me. 557; Tarr v. Smith (1878) 68 Me. 97; Atwood v. Dearborn (1861) 1 Allen (Mass.) 483, 79 Am. Dec. 755; Thaxter v. Foster (1891) 153 Mass. 151, 26 N. E. 434; Bradley v. Obear (1839) 10 N. H. 477; Fitzsimmons v. Joslin (1849) 21 Vt. 129, 52 Am. Dec. 46. Contra: Van Duzor v. G H. Allen (1878) 90 Ill. 499.

in the case of a conditional delivery, where title does not pass as between the vendor and vendee, the latter can, nevertheless, give good title to a bona fide purchaser or pledgee.[12] The weight of authority, however, is that as a worthless check is not payment, title does not pass, and the seller is allowed to reclaim his goods even as against a bona fide purchaser for value.[13] On principle, it would seem that this is placing an unwarranted burden upon the bona fide purchaser for value and that, as between him and the original seller, the loss should preferably fall upon the latter, who made the situation possible. It is to be hoped that the instant case will not be blindly followed as decisive of the rights of the bona fide purchaser for value.[14] *H. A. M.*

WORKMEN'S COMPENSATION ACT: RIGHT TO COMPENSATION FOR DISEASE ARISING OUT OF EMPLOYMENT—Although the Industrial Accident Commission had, in at least one instance, granted an award of compensation[1] for contagious[2] disease, an appeal had never been taken from such an award until the case of *City and County of San Francisco v. Industrial Accident Commission*[3] came before the Supreme Court. In this case the employee contracted influenza while working as a hospital steward during the course of a general epidemic. The award was sustained and the decision has since been followed in *Engels Copper Mining Company v. Industrial Accident Commission*,[4] the facts of which are almost identical.

In 1917 the Workmen's Compensation Act[5] was amended by the addition of a definition of the term "injury" which includes "any injury or disease arising out of the employment."[6] California seems to be the only state which has thus expressly provided for compensation for disease, the general tendency of legislatures having been to exclude disease.[7] One effect of this express statutory provision is to relieve the courts from the necessity of deciding whether a given disease is an "accidental injury," or an

[12] Parker et al v. Baxter et al (1881) 86 N. Y. 586.

[13] National Bank of Commerce v. Chicago etc. Ry. Co. (1890) 44 Minn. 224, 46 N. W. 342, 20 Am. St. Rep. 566, 9 L. R. A. 263; Johnson v. Brinkman Commission Co. v. Central Bank (1893) 116 Mo. 558, 22 S. W. 813, 38 Am. St. Rep. 615.

[14] For a discussion of this phase of the question, cf. Williston on Sales, § 346.

[1] Petersen v. San. Francisco Hospital (1916) 3 Cal. Ind. Acc. Com. Dec. 395.

[2] "Contagious:" applied to a disease of which the cause is transmitted from person to person, through houses, villages, cities and countries (Gould's Dictionary of Medicine). See also Stedman's Medical Dictionary.

[3] (June 30, 1920) 60 Cal. Dec. 36, 191 Pac. 26. Rehearing in Supreme Court denied July 30, 1920.

[4] (Sept. 17, 1920) 60 Cal. Dec. 319.

[5] Cal. Stats. 1913, ch. 176; Cal. Stats. 1915, ch. 541, 607, 662; Cal. Stats. 1917, ch. 586; Cal. Stats. 1919, ch. 471.

[6] Cal. Stats. 1917, ch. 586, § 1 (4).

[7] 1 Honnold on Workmen's Compensation, § 138, p. 536.